

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

EARLE E. AUSHERMAN, *et al.*,

*

Plaintiffs-Appellants,

*

v.

*

BANK OF AMERICA CORPORATION,
et al.,

*

Civil Action No. MJG 01-438

*

Defendants-Appellees.

*

* * * * *

INTERIM SEALING MOTION

Defendants-Appellees, Bank of America Corporation (“BAC”) and Banc of America Auto Finance Corp. (“BAAF”) (collectively, “Defendants-Appellees”), through their undersigned counsel, move this Court pursuant to Local Rules 104.13(c) and 105.11 to secure and seal Exhibit A to the Motion to Supplement the Record (Paper No. 265) (the “Motion”). In support of this Interim Sealing Motion, Defendants-Appellees state as follows:

1. On September 10, 2002, the Court entered an Order (Paper No. 172) (the “Order”) protecting the confidential nature of personal information relating to any judicial officer involved in this action.

2. On September 9, 2005, Defendants-Appellees electronically filed the Motion along with Exhibits B and C attached thereto. Exhibit A of the Motion exceeded the Court’s fifteen page limit for filing of electronic attachments and existed only in paper format. As such, Defendants-Appellees filed a Notice of Filing Lengthy

Exhibits (the “Notice”) on September 9, 2005, indicating that paper copies of Exhibit A would be filed and served on September 12, 2005.

3. On September 12, 2005, Defendants-Appellees attempted to hand-deliver a copy of the Notice, Exhibits A-C of the Motion, and a receipt indicating that the Notice was filed electronically with the Court on September 9, 2005 (the “September 12, 2005 Filing”). Defendants-Appellees also hand-delivered courtesy copies of these documents to the Court’s chambers on September 12, 2005.

4. Exhibit A of the Motion contained confidential information in the form of a letter to the Court from Defendants-Appellees’ counsel, Ava Lias-Booker, dated July 27, 2004, and several attachments to that letter. A reproduction of Plaintiffs’ Motion and Memorandum of Points and Authorities to Recuse Magistrate Judge (Paper No. 143) (“Plaintiffs’ Motion”) posted on an Internet web-site known as www.MotherK.com was included as an attachment to the July 27, 2004, letter. Plaintiffs’ Motion which was filed by Plaintiffs-Appellants’ counsel, Rodney R. Sweetland, III, published personal information regarding Magistrate Judge Grimm.

5. Defendants-Appellees inadvertently failed to move to seal Exhibit A of their Motion as required by the Court’s Order, and did not become aware of this until receiving the Memorandum of Points and Authorities in Opposition to Motion to Supplement the Record (Paper No. 267) (the “Opposition”) filed by Mr. Sweetland on September 19, 2005. Footnote 1 of the Opposition noted that Magistrate Judge Grimm’s home address was “apparently” filed in the public record in Exhibit A to Defendants-Appellees’ Motion. *See* Opp’n at 1. Plaintiffs-Appellants’ footnote referred to the attachment to Ms. Lias-Booker’s July 27, 2004, letter of Plaintiffs’ Motion and

Memorandum of Points and Authorities to Recuse Magistrate Judge (Paper No. 143), previously filed by Mr. Sweetland in this action on August 12, 2002, in which Magistrate Judge Grimm's home address was published.

6. On September 28, 2005, Defendants-Appellees' counsel, Todd Gustin, spoke with Ms. Mary Boyle of the Clerk's Office via telephone. Ms. Boyle confirmed that the Clerk's Office did not have the September 12, 2005 Filing in its possession. Ms. Boyle informed Mr. Gustin that the Court's chambers received and is in possession of the September 12, 2005 Filing.

7. Exhibit A of the Motion was never electronically filed and Defendants-Appellees are advised that it is not on file with the Clerk's Office.

8. The Court's Order requires each party to file an Interim Sealing Motion when filing with the Court any document "disclosing in its text or in an attachment the residential address, social security number or other personal information relating to any judicial officer involved in this case." Because Exhibit A to Defendants-Appellees' Motion contains confidential information, no alternative to sealing would provide sufficient protection.

WHEREFORE, Defendants-Appellees respectfully request that this Court secure and seal Exhibit A to Defendants-Appellees' Motion to Supplement the Record in order to protect the confidentiality of the judicial officers involved in this action.

Respectfully submitted,

/s/

Ava E. Lias-Booker (Bar No. 05022)

Todd Gustin (Bar No. 27560)
McGUIREWOODS LLP
7 Saint Paul Street, Suite 1000
Baltimore, Maryland 21202
(410) 659-4430
(410) 659-4558 (Fax)

*Attorneys for Defendants
Bank of America Corporation and
Banc of America Auto Finance Corp.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2005, I directed that the foregoing paper, Interim Sealing Motion, be electronically filed and served via first-class mail, postage prepaid, to: Pamela A. Bresnahan, Esquire, Vorys, Sater, Seymour, and Pease LLP, 1828 L Street, NW, Suite 1111, Washington, DC 20036, Peter F. Axelrad, Esquire, Council, Baradel, Kosmerl, and Nolan PA, 125 West St, Fourth Floor, Annapolis, Maryland, 21404-2289, and Rodney R. Sweetland, III, Esquire, Adduci, Mastriani, and Schaumberg LLP, 1200 Seventeenth Street, NW, Fifth Floor, Washington, DC 20036.

/s/

Todd Gustin

\\COM\542436.1